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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,749	11/12/2003	Hitoshi Furuya	CU-3447 RJS	7555
26530	7590	11/23/2005		
LADAS & PARRY LLP 224 SOUTH MICHIGAN AVENUE SUITE 1600 CHICAGO, IL 60604				
			EXAMINER KAYRISH, MATTHEW	
			ART UNIT 2653	PAPER NUMBER

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/706,749	Applicant(s) FURUYA ET AL.	
	Examiner Matthew G. Kayrish	Art Unit 2653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/28/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being unpatentable over Park (U.S. Patent Number 6445673).
3. Regarding claim 1, Park et al disclose:

A disk apparatus comprising:

A head that reads information from a disk (Abstract);

A guiding rod that movably supports and guides the head (column 3, lines 50-52); and

A height adjustment portion that is rotatably formed on a base for adjusting the height of the guiding rod (column 3 & 4, lines 65-67 & 1-2),

Wherein the height adjustment portion includes a height adjustment cam for sandwiching the guiding rod (figure 4).

4. Regarding claim 2, Park et al disclose:

The disk apparatus as claimed in claim 1,

Wherein when the height adjustment portion is rotated where the guiding rod is sandwiched by the height adjustment cam (figure 4), the height of the

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guiding rod is adjusted while the guiding rod is restrained by the height adjustment cam (figure 4).

5. Regarding claim 3, Park et al disclose:

The disk apparatus as claimed in claim 1, wherein the height adjustment portion is shaped as a circular cylinder (column 4, line 3).

6. With regard to claim 4, a "product by process" claim is directed to the product per se, no matter how actually made, see *In re Hirao*, 190 USPQ 15 at 17 (footnote 3, CCPA, 5/27/76); *In re Brown*, 173 USPQ 685 (CCPA 5/18/72); *In re Luck*, 177 USPQ 523 (CCPA, 4/26/73); *In re Fessmann*, 180 USPQ 324 (CCPA, 1/10/74); *In re Thorpe*, 227 USPQ 964 (CAFC, 11/21/85). The patentability of the final product in a "product by process" claim must be determined by the product itself and not the actual process and an old or obvious product produced by a new method is not patentable as a product, whether claimed in "product by process" claims or not.

7. Regarding claim 4, Park et al disclose everything in claim 1, further disclosing:

Wherein the height adjustment portion is formed by outsert molding (Product by Process).

8. Regarding claim 5, Park et al disclose:

The disk apparatus as claimed in claim 1, wherein no height adjustment cam is formed at a prescribed peripheral area of the height adjustment portion (figure 3).

9. Regarding claim 6, Park et al disclose:

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The disk apparatus as claimed in claim 1, wherein the height adjustment cam sandwiches the guiding rod at an end portion of the guiding rod (figure 4).

10. Regarding claim 7, Park et al disclose:

The disk apparatus as claimed in claim 6, wherein the end portion of the guiding rod has an end surface that is engaged to a bottom surface of the height adjustment cam (column 4, lines 15-20).

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew G. Kayrish whose telephone number is 571-272-4220. The examiner can normally be reached on 8am - 5pm M-F.
12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Korzuch can be reached on 571-272-7589. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Handwritten signature of William Korzuch, with the initials 'MK' written below it.

William Korzuch
WILLIAM KORZUCH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

10-17-2005